IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4019 OF 2006

Mrs. Rekha Dipak Naik ..Applicant

Vs.

The Senior Inspector of Police and ors. ..Respondents

Mr. Adhik Shirodkar, Senior Advocate with Mr. Sanjog S. Parab for applicant.
Mrs. A.S. Pai, APP for State.
Mr. Satish Maneshinde for original complainant.

CORAM: B.H. MARLAPALLE, J.

Date : January 16, 2007.

P.C.:

1. Heard Mr. Shirodkar the learned Senior Counsel with Mr. Sanjog Parab for the applicant, Mrs.Pai the learned APP for State and Mr.Satish Maneshinde the learned counsel for the original complainant i.e. Professor Yande.

2. The applicant and her husband Shri Dipak Naik have been impleaded as accused in Crime No.93 of 2006 of the Economic Offences Wing of Crime Branch, Mumbai for the offences punishable under Sections 406, 420

read with Section 34 of IPC. Apprehending arrest, both of them had approached the Sessions Court, Greater Mumbai in Anticipatory Bail Application Nos.1129 and 1197 of 2006. By a common order dated 20/10/2006 the application of the present applicant came to be rejected, whereas the application of her husband for anticipatory bail has been allowed by the learned Additional Sessions Judge. Hence this application for anticipatory bail by the applicant.

3. It appears that in June 2006 a legal notice came to be published in some of the leading newspapers on behalf of the Professor Yande alleging that 43 paintings and some stamps were entrusted to the applicant by Professor Yande and they were fraudulently exchanged or sold to some persons as per the press report published. Not being satisfied with this publication, professor Yande addressed a letter to the Joint Commissioner of Police, Crime Branch, Economic Offence Wing, Mumbai on 16/8/2006 and consequently, the C.R. as noted earlier came to be registered on or about 14/9/2006.

4. The learned Additional Sessions Judge after having gone through the documents and the investigation papers noted that the words "For Gaitonde (Vasudeo) 43 paintings" were inserted later on, though may not be the whole of the writing and, therefore, the possibility of interpolation of this document or manipulation was strong enough to investigate this part in detail. He also noted the transaction of 15 paintings alleged to have been made by the applicant with Aboli for Rs.84 lacs and consequent transactions with Mr. Rahim. The learned Additional Sessions Judge noted that the receipt of amount of Rs.35 lacs was not denied by the complainant but on going through his credentials, the learned Judge observed that it could not be believed that the professor would sell 43 paintings for a meagre amount of Rs.35 lacs. The Sessions Court further noted that the value of these paintings would be to the tune of Rs.3 crores and, prima facie, the present applicant had manipulated the document on which she relied upon. Original document was in her custody and though she was ready to hand over the same to the police, in the view of the learned Judge, this was not a fit case

where the court should exercise its discretion in favour of the applicant and extend the relief of pre-arrest bail. For these reasons the prayer for anticipatory bail made by the applicant was turned down.

5. After hearing the learned counsel for the respective parties as well as the learned APP and on perusal of the paper book as well as the investigation papers, it, prima facie, appears that the paintings were handed over by the professor to the present applicant. The date or month of handing over the paintings is in dispute. As per the applicant these paintings were handed over to her some time in the year 2003 itself, whereas the professor's case is that he handed over the paintings to the applicant in April 2005 or early 2005. The complainant's case is that these paintings were not for sale and they were entrusted to the applicant only when she had communicated that a prominent industrialist was proposing to buy some paintings and, therefore, she wanted to show these paintings to the said industrialist. The applicant contends that these

paintings were initially entrusted to her but subsequently the complainant needed money from time to time and, therefore, he decided to sell them and the agreed price for all the paintings was fixed at Rs.35 lacs. The transaction was concluded in September, 2005 and the transaction amount was paid in instalments. She relies upon, in support of these contentions, the document signed by both of them allegedly on 16/5/2006. On the other hand the case of the professor is that he received the amount but in consideration of only five paintings and the other paintings were only entrusted to the applicant and she was not authorised to dispose them off in any manner either by exchange or by sale. The complainant also claimed that he had handed over some stamps and there is a letter dated 31/8/2004 addressed by one Mr. David Brandon, an Englishman to the present applicant thanking her for sending the details of the Indian stamps which she had for sale and looking at the photo copies, he felt that they did not appear to be genuine. If this letter is read with the allegations of the complainant of handing over the rare postal stamps to the applicant, prima facie, it appears that

the stamps were handed over to the applicant prior to 31/8/2004. Apparently, the dispute between the parties is whether it was a sale transaction and if so, whether the transaction was for a total consideration of Rs.35 lacs.

6. During the course of investigation at least 16 paintings have been located from one party and two paintings have been returned by the applicant. As per the police, remaining 24 paintings could not be traced as yet. The affidavit in reply filed by the Police Inspector attached to Economic Offences Wing, Unit-III, Crime Branch, CID, Mumbai is dated 22/11/2006. This court by its order dated 13/11/2006 had granted interim anticipatory bail to the applicant and the said order has been continued from time to time till today. It is not the case of the Investigating Agency that the applicant has flouted the conditions of interim bail. In the affidavit in reply filed by the Investigating Agency regarding the tracing of these paintings it is stated as under :-

"3.(ii) The complainant - Prof. Vishwas Yande in his complaint has stated that the applicant had taken from him 43 paintings of Artist Gaitonde, out of which 5 were framed paintings. During the course of investigation it has been revealed that 15 paintings were sold by the applicant to one Mr. Abdul Husain Mohd. Ali Mitaiwala @ Aboli who sold it through Abdul Rahim Allarkhan Mansuri to Kaizad Farokh Todiwala and to Farokh Todiwala for consideration of Rs.84 lacs (Rs.40 lacs cash and the remaining amount of Rs.44 lacs were received in exchange of paintings of other Artists and Article). However, the 15 paintings are lying with Todiwala which he has not yet produced before the Investigating Authorities. The 24 paintings were sold by the applicant to Abdul Karim Jamal Mansuri, who in turn sold it to one Pankaj Wadhera of Delhi. The said 24 paintings were displayed in the exhibition at Delhi which was learnt by the complainant and has stated so in the

complaint. Hence, it is necessary to trace out these 24 paintings as to how many hands the same have been sold from the applicant to the others....."

7. Having noted the main issues of dispute between the parties and the fact that the hand writing samples of the applicant have been obtained and have been sent to forensic agency for its opinion during the last about two months and that the identification of individuals who allegedly last bought these paintings having been noted, I am not satisfied with the reasoning set out by the learned Additional Sessions Judge for refusing the protection of anticipatory bail to the applicant. This is not a fit case where custodial interrogation is warranted. The applicant is a permanent resident of Mumbai and she could be put to certain conditions so that she is available for investigation/interrogation as per the time and date fixed by the Investigating Agency and if required, on day to day basis. She also could accompany the I.O. to trace these paintings and she

is duty bound to assist the Investigating Agency in completing the investigation within a fixed period and, in fact, in the nearest future.

8. Hence, this application succeeds and the same is hereby granted. In the event of the applicant's arrest in connection with C.R. No.93 of 2006 registered with the Economic Offences Wing of the Crime Branch of Mumbai Police, she shall be released on bail on furnishing a PR bond in the sum of Rs.5,00,000/- and two solvent sureties for the like amount each and on the following additional conditions:

(a) She shall be available for interrogation by the Investigating Agency as per time and date fixed by them.

(b) She shall accompany the Investigating Officer to locate the paintings as of now, not only in Mumbai City but any part of the country and at her expenses.

(c) She shall deposit her pass-port with the Investigating Agency within a period of one week from today and in any case at the time of being released on bail.

(d) She shall not leave Mumbai City without informing the I.O. in writing at least 24 hours in advance.

(e) In case she has a mobile phone, the sim card will be surrendered to the Investigating Agency forthwith.

(f) She will not act in any manner so as to tamper with the evidence.

. These conditions will be applicable till the investigation is completed or for a period of three months whichever is earlier.

. At the request of Mr. Shirodkar, the option of cash sureties is granted to the applicant for a period of one week by way of interim arrangement.

(B.H. Marlapalle,J.)